

S.D.N.Y.-W.P.
11-cv-3194
Smith, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of March, two thousand nineteen.

Regina Lewis,

Plaintiff-Appellant,

Mishael Minnie Pine, Co-Counsel,

Plaintiff,

v.

18-3486

Newburgh Housing Authority, Marc Starling, In his official capacity as Executive Director of the Newburgh Housing Authority,

Defendants-Appellees.

In May 2018, this Court entered a leave-to-file sanction against Appellant. *See Lewis v. County of Orange, N.Y.*, 2d Cir. 16-4017, doc. 77. Appellant now moves for leave to file this appeal and for an injunction. Upon due consideration, it is hereby ORDERED that the motions are DENIED because the appeal does not depart from Appellant's "prior pattern of vexatious filings." *In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
REGINA LEWIS,

Plaintiff, : **ORDER OF DISMISSAL**

-against- :
11CV3194 (LMS)

NEWBURGH HOUSING AUTHORITY, et al., :

Defendants. :
-----X

Lisa Margaret Smith, U.S.M.J.¹

On October 2, 2018, the Court issued a Decision and Order in connection with its reconsideration of Plaintiff's competency under Rule 17(c) of the Federal Rules of Civil Procedure. Docket # 201 ("10/2/18 D&O"). Upon reconsideration, the Court adhered to its prior determination that Plaintiff is not competent to proceed in this litigation without the appointment of a guardian ad litem ("GAL"). Id. at 20-21. The Court noted that it has been unable to find a GAL for Plaintiff and that the federal courts provide no mechanism by which GALS may be obtained and compensated for their services. Id. at 21. The Court further cited the Second Circuit's holding in Berrios v. New York City Hous. Auth., 564 F.3d 130 (2d Cir. 2009), whereby a district court may not "make a merits determination of claims filed on behalf of a[n] . . . incompetent person who is not properly represented" by a GAL, and that if such GAL "is not himself [or herself] an attorney, he [or she] must be represented by an attorney in order to conduct the litigation." Id. at 134. The Court stated that if Plaintiff could not obtain another

¹The parties have consented to my exercise of jurisdiction over this matter pursuant to 28 U.S.C. § 636(c). Docket # 14.

GAL who either was an attorney or was represented by an attorney, then it would dismiss this action without prejudice. 10/2/18 D&O at 21 (citing Berrios, 564 F.3d at 135 (allowing for dismissal without prejudice where GAL is not an attorney and fails to obtain counsel)). The Court ordered that "Plaintiff shall have **30 days from the date of this Decision and Order** in which to obtain a new GAL. If Plaintiff is unable to do so, then the Court **shall dismiss this action without prejudice.**" Id. at 22 (emphasis in original).

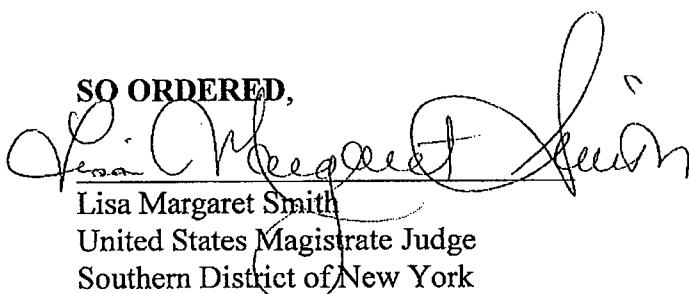
More than thirty days have passed since the D&O was issued, and Plaintiff has not informed the Court that she has obtained a new GAL. Consequently, in accordance with Berrios, the Court hereby dismisses this action without prejudice.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Court dismisses this action without prejudice. If Plaintiff is, at some point, deemed competent by a federal court, or if she is able to obtain a new GAL, she may move to reopen this action.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppededge v. United States, 369 U.S. 438, 444-45 (1962).

Dated: November 5, 2018
White Plains, New York

SO ORDERED,

Lisa Margaret Smith
United States Magistrate Judge
Southern District of New York